

VETERANS HEALTH CARE AND PROCUREMENT
IMPROVEMENT ACT OF 2002

JULY 22, 2002.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SMITH of New Jersey, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 3645]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3645) to amend title 38, United States Code, to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Veterans Health Care and Procurement Improvement Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References to title 38, United States Code.
- Sec. 3. Limitation on use of local contracts for Department of Veterans Affairs procurement of health-care items.
- Sec. 4. Enhancements to enhanced-use lease authority.
- Sec. 5. Eligibility for Department of Veterans Affairs health care of certain additional Filipino World War II veterans residing in the United States.
- Sec. 6. Outpatient dental care for all former prisoners of war.
- Sec. 7. Improved accountability of research corporations established at Department of Veterans Affairs medical centers.
- Sec. 8. Department of Defense participation in Revolving Supply Fund purchases.
- Sec. 9. Name of Department of Veterans Affairs outpatient clinic, New London, Connecticut.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other

provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 3. LIMITATION ON USE OF LOCAL CONTRACTS FOR DEPARTMENT OF VETERANS AFFAIRS PROCUREMENT OF HEALTH-CARE ITEMS.

(a) IN GENERAL.—Section 8125 is amended to read as follows:

“§8125. Procurement of health-care items

“(a) Except as provided in subsection (b), any procurement of a health-care item by the Department shall be made through the use of a Federal Supply Schedule contract, or a national contract, that meets the requirements of subsection (d).

“(b)(1) Subsection (a) does not apply to a procurement of a health-care item in any of the following cases:

“(A) A procurement that is necessary to meet a current or near-term medical emergency at a medical center.

“(B) A procurement that is for a health-care item that is not listed in the Federal Supply Schedule or as part of a national contract and for which there is a valid clinical need.

“(C) A procurement that is for a specialized health-care item not listed in the Federal Supply Schedule or as part of a national contract and that is to meet the special needs of an individual patient who has one of the special needs identified in section 1706(b) of this title and who has a valid clinical need for the item.

“(D) A procurement that is part of an approved sharing agreement between the Department of Defense and the Department of Veterans Affairs with demonstrable cost-per-item savings for a health-care item listed on the Federal Supply Schedule or a national contract.

“(E) A procurement that supports a prime contract or a subcontract with a small business concern qualifying for a procurement preference program under section 8 or 15 of the Small Business Act (15 U.S.C. 637, 644), if the cost of the item to be procured is no more than the cost (taking price and value into consideration) of the comparable item on the Federal Supply Schedule or national contract and if the item meets the requirements of subsections (d)(1)(A) and (d)(2).

“(2) A procurement may be made as authorized under subparagraph (B) of paragraph (1) only if the procurement is specifically authorized in advance in writing by the Secretary. The authority of the Secretary under the preceding sentence may only be delegated to the Deputy Secretary or to an official of the Veterans Health Administration not below the level of a Deputy Under Secretary (or equivalent) acting jointly with a procurement executive of the Department not below the level of an Associate Deputy Assistant Secretary.

“(c) In the case of an emergency procurement of a health-care item as authorized by subsection (b)(1)(A), the quantity of the item procured may not exceed the quantity of that item that is the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

“(d) A contract meets the requirements of this subsection if—

“(1) the contract includes—

“(A) provisions referred to as ‘preaward and postaward audit clauses’; and

“(B) a provision referred to as a ‘price reduction clause’; and

“(2) in the case of a contract to be made with a vendor that is a distributor, the contract will be for distribution services only unless the manufacturer of the product can clearly demonstrate that at least 60 percent of its sales of the item through that vendor is to commercial customers with negotiated product prices and that the vendor actually stocks and distributes the product.

“(e)(1) The Secretary shall establish procedures to assure compliance by each Department medical facility with the provisions of this section and with applicable Federal and Department procurement regulations.

“(2) The procedures established by the Secretary under paragraph (1) shall be designed to maximize health-care item variety and the use of the Federal Supply Schedule.

“(3) The Secretary shall establish and enforce procedures limiting the standardization of items at the local, regional, or national level to provide special patient populations (as identified in section 1706(b) of this title) with the range and types of health-care items required to meet their clinical and quality-of-life needs.

“(4) The Advisory Committee on Prosthetics and Special-Disabilities Programs established under section 543 of this title shall review the procedures established under paragraph (3), including the implementation of those procedures, and shall advise the Secretary when those procedures are not effectively enforced by the Department.

“(f)(1) The Secretary shall establish annual goals for Department medical centers for the purchase of health-care items from Federal Supply Schedule and national contracts meeting the requirements of subsection (d). Such goals shall be designed to maximize the percentage of such purchases that are made through such contracts.

“(2) The Secretary shall establish goals for the Department for procurements from small business concerns qualifying for a procurement preference program under section 8 or 15 of the Small Business Act (15 U.S.C. 637, 644). Such goals shall be no less than the national goal for each such procurement preference program under either of those sections.

“(3) Achievement of the goals established under this subsection shall be an element in the performance standards for employees of the Department who have the authority and responsibility for achieving those goals.

“(g) A provision of law that is inconsistent with any provision of this section shall not apply, to the extent of the inconsistency, to the procurement of a healthcare item for the Department.

“(h)(1) Not later than December 31 each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the Senate and House of Representatives a report on the procurement of health-care items during the preceding fiscal year. Each such report shall include, for the year covered by the report, the following:

“(A) The total dollar amount of all items listed in Federal Supply Classification (FSC) Group 65 or 66 and the total dollar value of the exceptions to subsection (a) under each of subparagraphs (A), (B), (C), (D), and (E) of subsection (b)(1), shown by medical facility.

“(B) A detailed explanation for exceptions to subsection (a), including—

“(i) the rationale for use of emergency procurement at Department medical facilities;

“(ii) the rationale for approval of requests under subsection (b)(1)(B) for procurement of items not listed on the Federal Supply Schedule or on national contracts; and

“(iii) exceptions granted for special health-care needs of veterans with disabilities described in section 1706(b) of this title.

“(C) Analysis of sharing agreements between the Department and the Department of Defense to indicate the basic written sharing initiative and the division of financial responsibility between the two Departments.

“(D) The stated goal under each procurement preference program, together with an assessment of the performance of the Department toward achievement of that goal, especially with respect to the goal for contracting with businesses that are owned by veterans with service-connected disabilities.

“(2) The Advisory Committee on Prosthetics and Special-Disabilities Programs of the Department shall submit comments on each report under paragraph (1) before the report is submitted under that paragraph, and the Secretary shall include those comments in the report as submitted.

“(i) For the purposes of this subsection:

“(1) The term ‘health-care item’ includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66.

“(2) The term ‘national contract’ means a contract for procurement of an item that is entered into by the National Acquisition Center of the Department or another Department procurement activity, as authorized by the Secretary, that is available for use by all Department medical facilities.

“(3) The term ‘valid clinical need’ means in the professional judgment of an appropriate clinician. Such term applies to health care items, prosthetic appliances, sensory or mobility aids and supplies that are prescribed by a physician for special patient populations such as veterans with spinal cord dysfunction, blindness, amputations, and other veterans included in section 1706(b) of this title.

“(4) The term ‘Federal Supply Schedule contract’ means a contract that is awarded and administered by the National Acquisition Center of the Department under a delegation of authority from the Administrator of the General Services Administration.

“(5) The term ‘emergency procurement’ means a procurement necessary to meet an emergency need affecting the health or safety of a person being furnished health-care services by the Department.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on September 30, 2003, and shall apply to procurements by the Secretary of Veterans Affairs after that date.

SEC. 4. ENHANCEMENTS TO ENHANCED-USE LEASE AUTHORITY.

(a) **INCREASED FLEXIBILITY UNDER ENHANCED-USE LEASES.**—Section 8162(a)(2)(B) is amended—

- (1) by striking “proposed by the Under Secretary for Health” and inserting “proposed by one of the Under Secretaries”; and
- (2) by striking “to the provision of medical care and services” and inserting “to the programs and activities of the Department”.

(b) **NOTIFICATION OF PROPERTY TO BE LEASED.**—Section 8163 is amended—

- (1) in the first sentence of subsection (a)—
 - (A) by striking “designate a property to be leased under an enhanced-use lease” and inserting “enter into an enhanced-use lease with respect to certain property”; and
 - (B) by striking “before making the designation” and inserting “before entering into the lease”;
- (2) in subsection (b), by striking “of the proposed designation” and inserting “to the congressional veterans’ affairs committees and to the public of the proposed lease”; and
- (3) in subsection (c)—
 - (A) in paragraph (1)—
 - (i) by striking “designate the property involved” and inserting “enter into an enhanced-use lease of the property involved”; and
 - (ii) by striking “to so designate the property” and inserting “to enter into such lease”;
 - (B) in paragraph (2), by striking “90-day period” and inserting “45-day period”;
 - (C) in paragraph (3)—
 - (i) by striking “general description” in subparagraph (D) and inserting “description of the provisions”; and
 - (ii) by adding at the end the following new subparagraph:

“(G) A summary of a cost-benefit analysis of the proposed lease.”; and
 - (D) by striking paragraph (4).

(c) **DISPOSITION OF LEASED PROPERTY.**—Section 8164 is amended—

- (1) in subsection (a)—
 - (A) by striking “by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)” in the first sentence; and
 - (B) by striking the third sentence;
- (2) in subsection (b)—
 - (A) by striking “Secretary and the Administrator of General Services jointly determine” and inserting “Secretary determines”; and
 - (B) by striking “Secretary and the Administrator consider” and inserting “Secretary considers”; and
- (3) in subsection (c), by striking “90 days” and inserting “45 days”.

(d) **USE OF PROCEEDS.**—Section 8165 is amended—

- (1) in subsection (a)—
 - (A) by striking “(1)” after “(a)”;
 - (B) by inserting after “of this title” the following: “, except that any funds received by the Department under an enhanced-use lease in support of the Veterans Benefits Administration or the National Cemetery Administration and remaining after any deduction from such funds under subsection (b) shall be credited to applicable appropriations of that Administration”; and
- (C) by striking paragraph (2);
- (2) in subsection (b), by adding at the end the following new sentence: “The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.”; and
- (3) by striking subsection (c).

(e) **CLERICAL AMENDMENTS.**—(1) The heading of section 8163 is amended to read as follows:

“§ 8163. Hearing and notice requirements regarding proposed leases”.

(2) The item relating to section 8163 in the table of sections at the beginning of chapter 81 is amended to read as follows:

“8163. Hearing and notice requirements regarding proposed leases.”.

SEC. 5. ELIGIBILITY FOR DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE OF CERTAIN ADDITIONAL FILIPINO WORLD WAR II VETERANS RESIDING IN THE UNITED STATES.

(a) **ELIGIBILITY FOR HEALTH CARE.**—The text of section 1734 is amended to read as follows:

“(a) The Secretary shall furnish hospital and nursing home care and medical services to any individual described in subsection (b) in the same manner, and subject to the same terms and conditions, as apply to the furnishing of such care and services to individuals who are veterans as defined in section 101(2) of this title. Any disability of an individual described in subsection (b) that is a service-connected disability for purposes of this subchapter (as provided for under section 1735(2) of this title) shall be considered to be a service-connected disability for purposes of furnishing care and services under the preceding sentence.

“(b) Subsection (a) applies to any individual who is a Commonwealth Army veteran or new Philippine Scout and who—

“(1) is residing in the United States; and

“(2) is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.”.

(b) LIMITATION.—The amendment made by subsection (a) shall take effect on the date on which the Secretary of Veterans Affairs submits to the Committees on Veterans’ Affairs of the Senate and House of Representatives and publishes in the Federal Register a certification that sufficient resources are available for the fiscal year during which the certification is submitted to carry out section 1734 of title 38, United States Code, as amended by such amendment, during that fiscal year at those facilities of the Department of Veterans Affairs where the majority of veterans described in subsection (b) of such section will receive hospital and nursing home care and medical services authorized by subsection (a) of such section.

SEC. 6. OUTPATIENT DENTAL CARE FOR ALL FORMER PRISONERS OF WAR.

Section 1712(a)(1)(F) is amended by striking “and who was detained or interned for a period of not less than 90 days”.

SEC. 7. IMPROVED ACCOUNTABILITY OF RESEARCH CORPORATIONS ESTABLISHED AT DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTERS.

(a) AUDITS AND IMPROVED ANNUAL REPORT.—Subsection (b) of section 7366 is amended to read as follows:

“(b)(1) Not later than March 1 each year, each such corporation shall submit to the Secretary a report concerning the preceding calendar year. Each such annual report shall include the following:

“(A) A detailed statement of the corporation’s operations, activities, and accomplishments during the preceding calendar year.

“(B) A description of each research project or activity for which funds were provided by the corporation during that year or for which funds were provided by the corporation during a preceding year and that is ongoing during the year covered by the report, including, for each such project or activity, the title of the project or activity and a description of the purpose of the project or activity.

“(C) A statement of the amount of funds controlled by the corporation as of the first day, and as of the last day, of the year covered by the report and a statement of the amount of funds received, shown by source, during the year.

“(D) An itemized accounting of all disbursements made during the year.

“(E) The most recent audit of the corporation under paragraph (2).

“(F) Such other information as may be necessary to enable the Secretary to prepare the annual report to congressional committees required under section 7367 of this title.

“(2) A corporation with a balance of funds under its control in excess of \$300,000 at any time during a calendar year shall obtain an audit of the corporation for that year. Any other corporation shall obtain an independent audit of the corporation at least once every three years. The report on any such audit shall specifically state whether the corporation audited made any payment, or provided any travel, during the period covered by the audit to a member of the board of directors of the corporation and, if so, the amount and recipient of any such payment or travel.

“(3) Any audit under paragraph (2) shall be performed by an independent auditor and shall be performed in accordance with generally accepted Government auditing standards and in accordance with Office of Management and Budget Circular A-133.

“(4) The Inspector General of the Department shall each year review the most recent audit under paragraph (2) of not less than 10 percent of the corporations described in the first sentence of paragraph (2) and not less than 10 percent of the corporations described in the second sentence of that paragraph. As part of such review, the Inspector General shall determine whether the audit was carried out in accordance with generally accepted Government auditing standards, as required by paragraph (3).”.

(b) ANNUAL REPORT OF SECRETARY.—(1) Subchapter IV of chapter 73 is amended—

(A) by inserting after subsection (c) of section 7366 the following:

“§ 7367. Annual report to congressional committees”; and

(B) in the text immediately following the section heading inserted by subparagraph (A)—

(i) by striking “(d)” and inserting “(a)”;

(ii) by inserting after the first sentence the following new sentence: “Each such report shall be based on the annual reports submitted by the corporations to the Secretary under section 7366(b) of this title and shall be submitted not later than May 1 of the year following the year covered by such reports.”; and

(iii) by striking “The report shall” and inserting the following:

“(b) Each such report shall”.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7366 the following new item:

“7367. Annual report to congressional committees.”.

(c) EXTENSION OF AUTHORITY TO ESTABLISH RESEARCH CORPORATIONS.—Section 7368 is amended by striking “December 31, 2003” and inserting “December 31, 2006”.

SEC. 8. DEPARTMENT OF DEFENSE PARTICIPATION IN REVOLVING SUPPLY FUND PURCHASES.

(a) ENHANCEMENT OF DEPARTMENT OF DEFENSE PARTICIPATION.—Section 8121 is amended—

(1) by redesignating subsection (b) and (c) as subsections (d) and (e), respectively;

(2) by designating the last sentence of subsection (a) as subsection (c); and

(3) by inserting after paragraph (3) of subsection (a) the following new subsection:

“(b) The Secretary may authorize the Secretary of Defense to make purchases through the fund in the same manner as activities of the Department. When services, equipment, or supplies are furnished to the Secretary of Defense through the fund, the reimbursement required by paragraph (2) of subsection (a) shall be made from appropriations made to the Department of Defense, and when services or supplies are to be furnished to the Department of Defense, the fund may be credited, as provided in paragraph (3) of subsection (a), with advances from appropriations available to the Department of Defense.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply only with respect to funds appropriated for a fiscal year after fiscal year 2002.

SEC. 9. NAME OF DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC, NEW LONDON, CONNECTICUT.

The Department of Veterans Affairs outpatient clinic located in New London, Connecticut, shall after the date of the enactment of this Act be known and designated as the “John J. McGuirk Department of Veterans Affairs Outpatient Clinic”. Any reference to such outpatient clinic in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the John J. McGuirk Department of Veterans Affairs Outpatient Clinic.

INTRODUCTION

H.R. 3645, the Veterans Health Care and Procurement Improvement Act of 2002, addresses issues raised by the Committee in hearings, meetings, and through other oversight mechanisms during the course of this Congress.

On May 16, 2002, the Subcommittees on Oversight and Investigations and Health held a joint hearing on VA Research Corporations. Witnesses who appeared before the subcommittees included Mr. Michael Slachta, Jr., Assistant Inspector General for Audit, Department of Veterans Affairs, accompanied by Mr. John Bilobran, Deputy Assistant Inspector General for Audit, and Dr. John Mather, Chief Officer, Office of Research Compliance and Assurance; the Honorable Robert H. Roswell, M.D., Under Secretary for Health, Veterans Health Administration, Department of Veterans Affairs, accompanied by the Honorable Tim S. McClain, General Counsel, John R. Feussner, M.D., Chief Research and Development Officer, and Mindy Aisen, M.D., Director of Rehabilitation Re-

search and Development; Mr. Antonio Laracuenta, Chairman, National Association of Veterans' Research and Education Foundations and Executive Director, Atlanta Research and Education Foundation; Franklin Zieve, M.D., Ph.D., President, McGuire Research Institute, Inc.; Mr. Ken Hickman, Executive Director, Brentwood Biomedical Research Institute; and Wendy Baldwin, M.D., Deputy Director for Extramural Research, National Institutes for Health. Written testimonies were received from Mr. James R. Fischl, Director of the National Veterans Affairs and Rehabilitation Commission, The American Legion; Ms. Joy J. Ilem, Assistant National Legislative Director, Disabled American Veterans; and Mr. Richard B. Fuller, National Legislative Director, Paralyzed Veterans of America.

On June 13, 2002, the Subcommittee on Health held a hearing on the health care of Filipino World War II veterans within the Department of Veterans Affairs. Witnesses who appeared before the subcommittee included His Excellency Albert Del Rosario, Ambassador to the United States, Embassy of the Philippines; the Honorable Anthony J. Principi, Secretary, Department of Veterans Affairs, accompanied by Mr. John H. Thompson, Deputy General Counsel; the Honorable Benjamin Gilman, Member of Congress from the State of New York; the Honorable Randy "Duke" Cunningham, Member of Congress from the State of California; the Honorable Dana Rohrabacher, Member of Congress from the State of California; the Honorable Patsy T. Mink, Member of Congress from the State of Hawaii; the Honorable Juanita Millender-McDonald, Member of Congress from the State of California; the Honorable Robert A. Underwood, Member of Congress from the Territory of Guam; Mr. Lou Diamond Phillips, actor and Filipino veterans activist, Los Angeles, California; Mr. Fritz Friedman, Chair, Assembly for Justice, Los Angeles, California; Mr. Resty Supnet, President, Filipino World War II Veterans Foundation of San Diego County, accompanied by Mr. Romy Monteyro; Mr. Patrick Ganio, President, American Coalition for Filipino Veterans; Ms. Susan Espiritu Maquindang, Executive Director, Filipino-American Service Group; Ms. Lourdes Santos Tancinco, President, San Francisco Veterans Equity Center; Ms. Joy J. Ilem, Assistant National Legislative Director, Disabled American Veterans; Mr. Richard Weidman, Director of Government Relations, Vietnam Veterans of America; and Mr. James Fischl, Director of National Veterans Affairs and Rehabilitation Commission, The American Legion. Written testimonies were received from the Honorable Barbara Boxer, United States Senator from the State of California; the Honorable Barbara Lee, Member of Congress from the State of California; the Honorable Nancy Pelosi, Member of Congress from the State of California; the Honorable Maxine Waters, Member of Congress from the State of California; General Tagumpay Nanadiego, Former Special Presidential Representative, Embassy of the Philippines; Ms. Wendy Lawrence, Associate Director, National Legislative Service, Veterans of Foreign Wars; and Mr. Richard Jones, National Legislative Director, AMVETS.

On June 26, 2002, the Subcommittee on Health held a legislative hearing to consider H.R. 3645, the Veterans Health Care Items Procurement Reform and Improvement Act of 2002. Witnesses who appeared before the subcommittee included Mr. Mark Catlett, Prin-

cial Deputy Assistant Secretary for Management, Department of Veterans Affairs, accompanied by Mr. Gary Krump, Deputy Assistant Secretary for Acquisition and Materiel Management, and Ms. Phillipa Anderson, Assistant General Counsel; Ms. Cynthia A. Bascetta, Director, Health Care-Veterans' Health and Benefits Issues, General Accounting Office; Mr. John S. Bilobran, Deputy Assistant Inspector General for Auditing, Department of Veterans Affairs, accompanied by Ms. Maureen T. Regan, Counselor to the Inspector General. Written testimonies were received from Mr. Terry Baker, Executive Director of Veterans Aimed Toward Awareness, Allied Health for Veterans Care; Mr. David Gorman, Executive Director, Disabled American Veterans; Mr. Paul A. Hayden, Deputy Director, National Legislative Service, Veterans of Foreign Wars of the United States; Mr. John F. Sommer, Jr., Executive Director, The American Legion; Mr. Richard B. Fuller, National Legislative Director, Paralyzed Veterans of America; Mr. Richard Weidman, Director of Government Relations, Vietnam Veterans of America; and Mr. Thomas H. Miller, Executive Director, Blinded Veterans Association.

On July 12, 2002, the Subcommittee on Health met and unanimously ordered H.R. 3645, with an amendment in the nature of a substitute, reported favorably to the full Committee.

On July 16, 2002, the full Committee met and ordered H.R. 3645, with an amendment in the nature of a substitute, reported favorably to the House by voice vote.

SUMMARY OF THE REPORTED BILL

H.R. 3645, as amended, would:

1. Provide reform of Department of Veterans Affairs (VA) programs and policies regarding procurement of certain health care items used by the VA to care for veterans by requiring increased use of the Federal Supply Schedule or national contracts, with improved accountability and strengthened reporting for exceptions made to the reformed policies.
2. Streamline the procedures that govern the VA's use of enhanced-use lease authority; provide the VA additional flexibility to enhance use of VA properties in complementary activities.
3. Provide hospital and nursing home care and medical services to certain Filipino World War II veterans of the Philippines Commonwealth Army and former Philippines "New Scouts" who now legally and permanently reside in the United States.
4. Expand eligibility for outpatient dental care for all former prisoners of war.
5. Strengthen auditing and reporting requirements for VA research and education corporations established at VA medical centers.
6. Authorize the Department of Defense to participate in VA's Revolving Supply Fund for the purchase of health care items.
7. Name the VA outpatient clinic in New London, Connecticut, for the late John J. McGuirk.

BACKGROUND AND DISCUSSION

HEALTH CARE PROCUREMENT REFORM

The largest health care systems in the United States are managed by the Federal government, and the Department of Veterans Affairs (VA) is a major component of the Federal health care system, with 6,470,224 veterans currently enrolled for fiscal year 2002. VA's procurement programs spend approximately \$5 billion each year to obtain a wide array of goods and services needed by VA to provide high-quality health care to veterans. Based on the Committee's analysis of reviews by the VA Inspector General (IG) and the General Accounting Office (GAO), as well as other reports, improved management of the purchasing of health care items in Federal Supply Classification (FSC) categories 65 (medical and dental supplies) and 66 (instruments and laboratory equipment), could provide significant savings that may be used in furtherance of VA's essential mission.

In prior years, numerous indicators suggested that VA was not achieving its potential as a large purchaser of medical and surgical supply and equipment items to secure the best pricing. This general perspective was reinforced by a May 31, 2001, VA IG report on the evaluation of purchasing practices in VA, as well as testimony provided by the GAO to the Subcommittee on Health at its hearing on June 26, 2002.

The IG evaluation and GAO testimony identified numerous deficiencies in current purchasing practices. Among other findings, the reports linked the cause of many deficiencies to a VA policy relieving agency procurement officials from the requirement to purchase health care items from the Federal Supply Schedule (FSS). In effect, this policy decentralized VA's contracting and procurement processes for a very substantial part of procurements. Decentralization may have had the unintended effect of giving many vendors of health care items an incentive to remove their products from the FSS and to seek product sales in a generally more profitable VA local-market arena.

In recent years, VA local-market purchases have proliferated, often under contracts without the advantage of audit requirements or "most-favored customer pricing" for the government, both practices normally required under FSS procedures. Seemingly cost-effective local purchases of health care items for a VA facility or a small network of facilities have been touted as significant gains in economies, but they obscure other, less efficient contracts and the higher administrative costs of contracting locally. These practices frustrate the aims of the FSS to obtain good products at the best prices on a national basis for the Federal establishment at large.

Claims of continued cost-effective purchases have been made by VA, but VA's data reporting on local purchases is often contradictory and difficult to reconcile. Numerous exceptions for various classes of health care items purchased under differing circumstances, coupled with a lack of standardized definitions for particular items have culminated in reports of widely variable local purchases. Tracking local purchases is further complicated by a growing VA practice of small-scale purchasing using government-issued credit cards, in particular for purchases below the \$25,000 reporting threshold for such purchase cards.

In June 2001, the Secretary appointed a VA procurement task force to evaluate the nature and scope of these problems and recommend solutions. The task force recommended leveraging the purchasing power of VA through mandated use of the FSS for medical and surgical purchases.

The Committee bill would require the Secretary to take actions consistent with the Department's procurement task force report, and would hold the Secretary accountable to Congress for tangible results. The Committee bill advances two goals: to gain greater efficiency for the resources obligated by the Department for specific classifications of health care items in FSC categories 65 (medical and dental supplies) and 66 (instruments and laboratory equipment), and to instill more accountability.

All current indicators demonstrate the desirability of greater centralization of the Department's acquisition process, but the Committee considers certain exceptions to this policy to be necessary and beneficial. The Committee developed five exceptions to address these needs. They are:

Near-term emergency needs.—Emergency purchases of health care items would be permitted, not to exceed the quantities reasonably necessary to meet the foreseeable need until resupply could be achieved through other actions. Authority for emergency purchases would remain a local authority and would be based on defined need. Bona fide emergency procurements would not require pre- or post-audit reviews or price reduction clauses otherwise required by the Committee's bill for all health care items.

Non-FSS-listed items to meet valid clinical needs.—A health care item not listed on the Federal Supply Schedule or on a national contract could be purchased under the Committee bill if a valid clinical need existed for the item and its procurement were approved in advance. While procurement of such an item would be conducted locally, its ultimate approval would rest with Departmental senior executives specified in the Committee bill. The Committee concluded that a centralization of the level of approval was necessary to assure the validity and relative rarity of procurements of this type. The Committee bill would require reports to the Committees on Veterans' Affairs of the House and Senate of the Department's use of this exceptional authority.

Non-FSS-listed items for valid clinical needs specific to certain patients.—This exception to the general policy is similar to the previous one, but it would target the health care item needs of special patient populations such as veterans with spinal cord injury, severe visual impairments, amputations, and other veterans whose disabilities are described in title 38, United States Code, section 1706(b). Medical care items procured under this exception would be obtained to meet the special needs of one of these severely disabled veterans, determined by the Department to exhibit a valid clinical need for the item or items in question. The Committee bill would require the Secretary of Veterans Affairs to promulgate procedures to govern such purchases.

Anticipated greater efficiencies from VA-DOD sharing initiatives.—Department of Veterans Affairs-Department of Defense health resources sharing initiatives have long been recognized as a method for improving efficiency and leveraging the potential of two very large health care delivery systems under separate governance. The Committee bill's exception for VA-DOD sharing ventures involving procurement of medical care items would be intended to promote the sharing process and associated joint procurements when in the interest of the government. However, this exception would require demonstrable savings (taking price and value into consideration) in comparison to similar items procured independently by either Department using FSS pricing or national contracts.

Protection for small business set-asides.—This exception would afford protection to small business concerns qualifying for procurement preference programs under the Small Business Act. Any contract under this exception would be required to include pre- and post-award audit clauses. Also, any such small business vendor that was a distributor (for other than distribution services per se) would be required to clearly demonstrate the commercial value of an item the Department procured, in accordance with a given standard.

The Secretary would be required to issue and enforce procedures that would limit the standardization of items for patient populations as identified in section 1706(b) title 38, United States Code. A "one-size-fits-all" approach to the particular needs of severely disabled veterans would be inappropriate. The Department's clinical practitioners would not be constrained by limited choices for severely disabled veterans. When selecting a health care item for the specialized-care needs of veterans, the clinician would be authorized under the Committee bill to consider both clinical and quality of life needs. Under the Committee bill, the Advisory Committee on Prosthetics and Special Disabilities Programs, established in section 543 of title 38, United States Code, would be authorized to oversee the Department's implementation of the Committee's bill as it would affect veterans under care in the various programs defined in section 1706(b), title 38, United States Code. The Advisory Committee would review the procedures promulgated by the Secretary and advise the Secretary whenever those procedures were not effectively enforced by the Department.

In summary, the Committee bill would require the Secretary to establish Department-wide goals for compliance with specified procurement requirements to maximize the percentage of purchases that are made from Federal Supply Schedule and national contracts. The Secretary would be required to establish performance goals for agency procurements from the FSS or national contracts, and would be required to report actual performance toward achievement of these goals to the Committees on Veterans' Affairs of the House and Senate at the conclusion of each fiscal year. The Secretary would be required to analyze and report purchases not made from the FSS or a national contract, and to evaluate Department employees responsible for procurement programs of their degree of compliance with the policies that would be promulgated by enactment of the Committee bill.

ENHANCED-USE LEASE AUTHORITY

Chapter 81 of title 38, United States Code, authorizes the Department to conduct an enhanced-use lease program to assist the Department in providing complementary uses of VA buildings and land holdings that are not needed for the direct care of veterans. The Department requested certain amendments be considered by the Committee to provide more flexibility to the Department in expanding the enhanced-use lease program to more facilities and in improving efficiency.

Under current law, business plans for enhanced-use lease projects are proposed by the Department's Under Secretary for Health for properties under direct control of the Under Secretary. The Committee bill would expand this authority to permit business plans for enhanced-use leases to be proposed by the Under Secretary for Benefits and the Under Secretary for Memorial Affairs. This provision would also clarify that the services which could be provided as in-kind consideration for an enhanced-use lease would not be limited to those provided on the leased property.

Two separate notifications to Congress are currently required by law prior to the Department entering into an enhanced-use lease. The Committee bill would combine the two notices into one notification. This report consolidation would streamline the Department's notification process and increase the Department's ability to take advantage of opportunities in private-sector markets.

Also, any disposal of property subject to an enhanced-use lease currently requires an additional procedural step, consultation with the Administrator of General Services. The Committee bill would remove this requirement and enable the Secretary to determine that such dispositions are in the best interests of the Department.

Current law requires proceeds received by the Department from an enhanced-use lease (and remaining after deduction of appropriate expenses) be deposited into the Health Services Improvement Fund, and any proceeds from a disposal of property subject to an enhanced-use lease be deposited into the Nursing Home Revolving Fund. The Committee bill would allow each of the three major administrations to be credited proceeds received from projects under its jurisdiction (after reimbursement of expenses), and would make these proceeds available for use by that administration. The provision would also clarify the Department's ability to use proceeds from an enhanced-use project to reimburse the account from which funds would be expended in the development of that project.

HEALTH CARE FOR FILIPINO COMMONWEALTH ARMY AND NEW SCOUT VETERANS

The Filipino soldiers of World War II served side-by-side with forces from the United States, exhibiting great courage at the epic battles of Bataan and Corregidor and contributing to the successful outcome of the war. After the Philippines became independent, Congress passed the Rescission Act of 1946, reducing or eliminating many of the veterans' benefits Filipino veterans had been eligible for based on service in the Commonwealth Army. Today, almost 60 years later, 60,000 World War II Filipino veterans are alive and continue to seek restoration of these benefits.

The Committee bill would provide a significant health care benefit to Commonwealth Army veterans and New Scouts of the Philippines who are permanent and legal residents of the United States, giving them equal status with their American veteran peers. Approximately 14,000 Filipino veterans in the United States would be eligible for this health care benefit. The Department would not offer these veterans access unless the Secretary of Veterans Affairs certified and provided public notice in the *Federal Register* that it had the resources to do so. The Administration provided testimony in support of this provision and estimated that the proposal would cost \$52.6 million over 5 years.

DENTAL BENEFITS FOR ALL FORMER PRISONERS OF WAR

Chapter 17 of title 38, United States Code, authorizes dental care and services for any dental condition to former prisoners of war (POWs) who were interned or incarcerated for 90 days or more by an enemy of the United States in wartime. The Committee bill would authorize the Department to provide outpatient dental care to former POWs, regardless of the length of their detention or internment. The Committee bill would ensure that former POWs receive all needed care for dental conditions that may be attributable to the privations experienced during their service to the Nation while held prisoner.

HEIGHTENED ACCOUNTABILITY FOR VA RESEARCH AND EDUCATION CORPORATIONS

In 1988, Congress enacted Public Law 100-322, the Veterans' Benefits and Services Act, which included a provision that gave the VA the authority to establish nonprofit research corporations. The Act provided a flexible funding mechanism for the conduct of approved research at medical centers. The impetus for establishing the research corporations in law was to provide a conduit for research funds and an accounting mechanism whereby the VA would submit to Congress an annual report on the number and location of corporations established and the amount of contributions made to each such corporation. Unfortunately, these reports provide Congress insufficient information about the activities of the corporations to enable Congress to provide proper oversight of their functions.

The Department's Assistant Inspector General for Auditing has testified before the Committee that the VA IG had published three reports from 1994-97 on concerns about insufficient information relating to the functions of these corporations. These reports identified the need for stricter accountability and oversight with regard to the administration of funds.

The Committee bill would amend section 7366 of title 38, United States Code, to require each VA research corporation to submit to the Secretary not later than March 1 of each year a detailed statement of corporate operations, activities and accomplishments during the preceding year. The statement would include the amount of funds received along with the source of funding and an itemized accounting for all disbursements. Under the Committee bill, those corporations with funding in excess of \$300,000 would continue to be required to obtain an audit of the corporation for that year, and corporations with funding totaling less than \$300,000 would obtain

an audit every three years. These audits would continue to be conducted by independent auditors and performed in accordance with generally accepted government auditing standards.

Under the Committee bill, the VA IG would be required to randomly review audits to determine whether they were carried out in accordance with the auditing standards specified by the bill. The Committee bill would also extend the authority for the corporations until December 31, 2006.

AUTHORIZE THE DEPARTMENT OF DEFENSE TO PURCHASE MEDICAL ITEMS AND SERVICES THROUGH VA'S REVOLVING SUPPLY FUND

The Veterans Millennium Health Care and Benefits Act, Public Law 106-117, requires the Secretaries of DOD and VA to jointly report on cooperation in procuring pharmaceuticals and medical supplies and equipment. Joint VA-DOD procurement is one of the President's management objectives, and VA recently adopted the recommendations of its procurement reform task force that endorsed joint procurement actions as a method to obtain better prices. However, achievement of these goals is difficult because the enabling language of the VA's revolving supply fund does not permit direct support of DOD's medical supply needs.

The Committee bill would grant direct authority to enable the Secretary of Veterans Affairs to permit the Secretary of Defense to use VA's supply fund, and would require the Secretary of Defense to reimburse the supply fund for such purchases.

NAMING OF VA COMMUNITY BASED OUTPATIENT CLINIC, NEW LONDON, CONNECTICUT

The Committee bill would honor the late John J. McGuirk for his service as a devoted World War II veteran and patriotic American by affixing his name to the Department's outpatient clinic in New London, Connecticut.

During World War II, Mr. McGuirk, a New London native, joined the Navy as a salvage diver and served honorably in the South Pacific. During his service, he was awarded the World War II Victory Medal, Asiatic Pacific Theatre Medal, and the Philippine Liberation Medal.

Mr. McGuirk's commitment to his Nation and fellow veterans was prominent throughout his life. He was an advocate for the opening of a VA clinic in southeastern Connecticut. His leadership led the VA to establish a Veterans Outreach Clinic in New London, on the grounds of the Coast Guard Academy.

The Connecticut Congressional delegation is unanimous in its support for renaming this facility after Mr. McGuirk, as are the Disabled Veterans of America, Veterans of Foreign Wars, Paralyzed Veterans of America, The American Legion, AMVETS, and the Coast Guard Academy. The naming of this clinic in memory of Mr. McGuirk is in compliance with the policy of the Committee for naming Department of Veterans Affairs facilities.

SECTION-BY SECTION ANALYSIS

Section 1(a) of the bill would provide that this Act may be cited as the "Veterans Health Care and Procurement Improvement Act of 2002."

Section 1(b) of the bill sets forth the table of contents.

Section 2 of the bill explains that citations made throughout this Act are understood to be amending, repealing or referencing sections of title 38 of the United States Code, unless otherwise stated.

Section 3(a) would limit use of local contracts for VA procurement of health care items by amending section 8125 of title 38, United States Code.

Section 8125 would require purchase of health care items either on a Federal Supply Schedule (FSS) contract or a national contract.

Section 8125(b)(1) would provide for five exceptions to the required use of FSS or national contracts.

Section 8125(b)(1)(A) would except a current or near-term medical emergency at a medical center.

Section 8125(b)(1)(B) would except a legitimate clinical need for a health care item that is not available on a FSS contract or part of a national contract.

Section 8125(b)(1)(C) would except the special needs of an individual patient if specified conditions are present and the patient's special needs are consistent with those special needs identified in section 1706(b), title 38, United States Code.

Section 8125(b)(1)(D) would except items that are fundamental to a sharing agreement between VA and the Department of Defense (DOD), if a comparative cost savings is achieved.

Section 8125(b)(1)(E) would except purchases made through a set-aside for small, disadvantaged, minority or veteran-owned businesses, with specific conditions.

Section 8125(b)(2) would establish an approval process for procuring items that are not part of a FSS or national contract and would establish lines of authority within VA for obtaining advance approval of such exemptions, which would be required to be in writing.

Section 8125(c) would establish a standard of "reasonably foreseeable need" for the quantity of an item that could be purchased using an emergency procurement exemption.

Section 8125(d) would establish the requirements for contracts under this subsection and impose limitations on participation by distributors who do not manufacture the product that would be procured.

Sections 8125(d)(1)(A) and (B) would require such contracts to contain "pre- and post-award audit clauses" and a "price reduction clause".

Section 8125(d)(2) would require that any contract made with a vendor that is a distributor would be for distribution services only unless the manufacturer of the product can clearly demonstrate that at least 60 percent of its sales of the item through that vendor would be to commercial customers with negotiated product prices and that the vendor actually stocks and distributes the product.

Section 8125(e)(1) would require the Secretary to establish procedures to assure compliance by each VA medical facility with the provisions of this section and applicable Federal and VA procurement regulations.

Section 8125(e)(2) would require that new compliance procedures be designed to maximize both variety of items available and standard use of the FSS.

Section 8125(e)(3) would require the Secretary to establish and enforce procedures limiting the standardization of items to be purchased at the local, regional or national level to provide patients with special needs, as identified in section 1706(b), title 38, United States Code, the range and type of health care items required to meet their individual clinical and quality-of-life needs.

Section 8125(e)(4) would require the Advisory Committee on Prosthetics and Special-Disabilities Programs to review VA's procurement procedures and actual performance as they relate to special-need patient populations and to advise the Secretary when those procedures are not effectively enforced by the VA.

Section 8125(f)(1) would require the Secretary to establish annual performance goals maximizing purchases of health care items from FSS and national contracts.

Section 8125(f)(2) would require the Secretary to establish performance goals for procurements from small, disadvantaged, minority or veteran-owned businesses qualifying for a procurement preference program under the Small Business Act (15 U.S.C. 637, 644), and would require that such goals be no less than the national goal for each such procurement preference program.

Section 8125(f)(3) would require that achievement of the goals established under this subsection would be an element in performance standards for VA employees with the authority and responsibility for achieving those goals.

Section 8125(g) would provide that any portion of another provision of law dealing with the procurement of health care items that is inconsistent with provisions of this Act would not apply to VA procurement of a health care item.

Section 8125(h)(1) would require specific annual reports from the VA detailing its procurement of health care items and implementation of provisions of this Act; the reports would be due to the Committees on Veterans' Affairs of the Senate and House of Representatives by December 31 of each year and cover the preceding fiscal year.

Sections 8125(h)(1)(A) through (D) would require such annual reports to include: the total dollar amount of all items listed in Federal Supply Classification Group 65 or 66 and the total dollar value by medical facility of the exceptions to the required use of FSS or national contracts; a detailed explanation for such exceptions, including the rationale for use of emergency procurement, approval of requests for unlisted items and the exceptions for special health care needs of veterans with disabilities; analysis of sharing agreements between VA and DOD; and the stated goal under each procurement preference program and an assessment of performance in achieving that goal.

Section 8125(h)(2) would require the VA Advisory Committee on Prosthetics and Special Disabilities to submit comments on each such report under paragraph (1) and would require the Secretary to include those comments in the report.

Sections 8125(i)(1) through (5) would for purposes of this subsection define the terms “health care item,” “national contract,” “valid clinical need,” “Federal Supply Schedule contract,” and “emergency procurement.”

Section 3(b) of the bill would provide an effective date of September 30, 2003, for the amendment made by subsection (a); the amendment would apply to VA procurements after that date.

Section 4(a) of the bill would expand the VA’s enhanced-use lease authority by amending section 8162 of title 38, United States Code.

Section 4(a)(1) of the bill would amend section 8162(a)(2)(B) to include under enhanced-use leasing authority each of the VA’s Under Secretaries, rather than only the Under Secretary for Health.

Section 4(a)(2) of the bill would amend section 8162(a)(2)(B) by expanding enhanced-use leasing authority from provision of medical care and services to all programs and activities of the VA.

Section 4(b)(1)(A) and (B) of the bill would amend section 8163(a) by changing the requirement for a public hearing from prior to when the Secretary proposes to designate a property to be leased to when the Secretary proposes to enter into an enhanced-use lease for a property.

Section 4(b)(2) of the bill would amend section 8163(b) to specify that notice must be given to the Committees on Veterans’ Affairs of the House and Senate and to the public before the required public hearing on the proposed lease.

Sections 4(b)(3)(A) and (B) of the bill would amend section 8163(c)(1) and (2) by changing the requirement for notification to the Committees on Veterans’ Affairs of the House and Senate from the time of the Secretary’s intent to designate the property involved for an enhanced-use lease, to the time of the Secretary’s intent to enter into an enhanced-use lease of the property involved, and by reducing the period the Secretary must wait before entering into such a lease from 90 days to 45 days.

Section 4(b)(3)(C) of the bill would amend section 8163(c)(3) by requiring a description of the provisions of the proposed lease, rather than a general description of the proposed lease, and by requiring a summary of a cost-benefit analysis.

Section 4(b)(3)(D) of the bill would strike the requirement of section 8163(c)(4) that the Secretary report to the Committees on Veterans’ Affairs of the House and Senate not less than 30 days before entering into an enhanced-use lease.

Section 4(c)(1) through (3) of the bill would amend section 8164(a) by eliminating the request of the Secretary to the Administrator of the General Services Administration regarding disposal of the property, and the requirement of notice to the Committees on Veterans’ Affairs of the House and Senate regarding disposition of property would be reduced from 90 days to 45 days.

Section 4(d) of the bill would amend section 8165(a) and (b) to allow funds received under an enhanced-use lease, after deduction of expenses, to be credited to applicable appropriations of the administration; and to allow the Department to use proceeds from an enhanced-use project to reimburse the appropriations of the De-

partment for expenses incurred in developing additional enhanced-use leases.

Section 4(e) of the bill would make clerical amendments to section 8163.

Section 5(a) of the bill would amend section 1734 of title 38, United States Code, to authorize the Secretary to furnish hospital and nursing home care and medical services to any individual who is a Commonwealth Army veteran or Philippines New Scout who is residing in the United States and who is a citizen of the United States or who is an alien lawfully admitted to the United States for permanent residence. Such care and services would be subject to the same terms and conditions as they apply to individuals who are veterans as defined in section 101(2) of title 38, United States Code. Service-connected disabilities for purposes of this subchapter (as provided for under section 1735(2) of title 38, United States Code), would be considered to be a service-connected disability for purposes of furnishing such care and services.

Section 5(b) of the bill would place a limitation on the provision of such care and services by requiring the Secretary to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives and publish in the *Federal Register* a certification that sufficient resources are available for the fiscal year during which the certification is submitted and at those facilities where the majority of these veterans would receive their care and services.

Section 6 of the bill would amend section 1712(a)(1)(F) of title 38, United States Code, to authorize outpatient dental care for all former prisoners of war without regard to the length of their internment or detention.

Section 7(a) of the bill would amend section 7366(b)(1) of title 38, United States Code to require that each research corporation at a VA medical center submit a report to the Secretary concerning the preceding calendar by not later than March 1 of each year. The report would be required to include a detailed description of the corporation's operations, activities, and accomplishments during the preceding calendar year; a description of each funded research project; a statement of the total funding controlled by the corporation; an itemized accounting of all disbursements made during the year; the most recent audit of corporation; and such other information as necessary to assist Secretary with the report required under section 7367 of title 38, United States Code.

Section 7366(b)(2) would require that corporations with funds in excess of \$300,000 during a calendar year obtain an audit for that calendar year. Corporations with funding levels of less than \$300,000 would be required to obtain an independent audit at least once every three years. The report would be required to include any payment or travel provided to members of the board of directors of the corporation and the amount of any such payment or travel.

Section 7366(b)(3) would require that any audit be performed in accordance with generally accepted government auditing standards and in accordance with Office of Management and Budget Circular A-133.

Section 7366(b)(4) would require that the Inspector General of the Department review at least 10 percent of all corporations with funds in excess of \$300,000 each year and 10 percent of all corporations with funds below \$300,000 at least once every three years. As part of any such review, the VA's Inspector General would be required to determine if the audits were carried out in accordance with generally accepted government auditing standards.

Section 7(b) of the bill would amend Subchapter IV of chapter 73 of title 38, United States Code, by adding a new section 7367 with the title, "Annual report to congressional committees".

Section 7367 would require that annual reports submitted by research corporations to the Secretary be submitted to Congress not later than May 1 of the year following the year covered by such reports.

Section 7(c) of the bill would amend section 7368 of title 38, United States Code, to extend authority to establish research corporations from December 31, 2003 until December 31, 2006.

Section 8(a) of the bill would amend section 8121 of title 38, United States Code, by adding a new subsection to allow the Secretary to authorize the Department of Defense to make purchases through the VA revolving supply fund in the same manner as activities of the VA, for services, equipment, or supplies furnished to the Secretary of Defense through the fund. The reimbursement would be made from Department of Defense appropriations and the fund could be credited with advances from appropriations made available to the Department of Defense.

Section 8(b) of the bill would provide that the amendment made by section 8(a) would only apply to Department of Defense funds appropriated for a fiscal year after fiscal year 2002.

Section 9 of the bill would name the Department of Veterans Affairs' outpatient clinic in New London, Connecticut, the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic."

PERFORMANCE GOALS AND OBJECTIVES

The provisions of the reported bill that are covered by the Government Performance and Results Act would affect VA procurement and enhanced-use leasing activities, auditing and reporting requirements for research and education corporations at VA facilities, and health and dental care eligibility for certain veterans. The VA's program performance goals and objectives are established in annual performance plans and are subject to the Committee's regular oversight.

STATEMENT OF THE VIEWS OF THE ADMINISTRATION

From the statement of Mr. Mark Catlett, Principal Deputy Assistant Secretary for Management, Department of Veterans Affairs, before the Subcommittee on Health, Committee on Veterans' Affairs, June 26, 2002:

We fully endorse the objective reflected in H.R. 3645 of leveraging the purchasing power of VA and other Government agencies. . . . We recognize that H.R. 3645 supports the objective of leveraging the purchasing power of VA and

other Government agencies. We believe that volume-leveraged purchasing in VA is essential. Our vast purchasing power must not be fragmented and the Department must employ contracting practices that achieve the best possible terms and prices in our acquisitions of health care items. . . . However, after careful consideration of the bill, VA does not believe that legislation mandating any particular procurement method in the acquisition of health care items is desirable. As acquisition methods and trends continue to evolve, this legislation may not allow the Department the necessary flexibility to take advantage of those improvements. The Department should not be compelled to seek legislative changes in order to take advantage of improved procurement practices.

From the statement of the Honorable Anthony J. Principi, Secretary, Department of Veterans Affairs, before the Subcommittee on Health, Committee on Veterans' Affairs, June 13, 2002:

Specifically with regard to health care, prior to October 27, 2000, the law authorized VA to provide care in the Manila Outpatient Clinic only for the service-connected conditions of U.S. veterans. The term 'U.S. veterans' includes members of the Old Philippine Scouts. With enactment of Public Law 106-377 in October of 2000, Congress authorized VA to begin providing care in the clinic for the non-service-connected conditions of those same U.S. veterans. Filipino veterans, however, including Commonwealth Army veterans and New Philippine Scouts, are not eligible for VA health care in the Philippines. The Philippine Government provides health care to eligible Filipino veterans. The law regarding care of Filipino veterans residing in the United States also changed. Prior to the enactment of Public Law 106-377, VA was authorized to provide care in the United States only for the service-connected conditions of Commonwealth Army veterans, members of recognized guerilla groups, and New Philippine Scouts. Public Law 106-377 authorized VA to begin providing hospital care, nursing home care, and medical services to veterans of the Commonwealth Army and recognized guerilla forces that have service-connected disabilities on the same basis as U.S. veterans. In short the change allowed these veterans to seek care for their non-service-connected conditions. The change in law did not expand eligibility for New Philippine Scout veterans. They continue to be eligible for care in the United States only on a discretionary basis (within the limits of VA resources) and only for service-connected disabilities. Mr. Chairman, legislation currently pending before the House and the Senate would further expand benefit eligibility for Filipino veterans and their survivors. In that regard, I am pleased to inform the Committee that, in our April 25 letter, addressed to Chairman Rockefeller of the Senate Committee on Veterans' Affairs, on S. 1042, the Department expressed the Administration's support for the following enhancements in benefits to Filipino veterans and their survivors:

. . .

- providing comprehensive care on the same basis as for U.S. veterans for veterans of the Commonwealth Army, recognized guerilla forces and New Philippine Scouts who are residing in the United States and are either citizens of, or aliens lawfully admitted for permanent residence in the United States, regardless of whether they have service-connected disabilities.

. . . Mr. Chairman, VA continues to work with the White House to explore opportunities to enhance our assistance to Filipino veterans. Section 1731 of Title 38 authorizes the President to assist the Republic of the Philippines in fulfilling its responsibilities in providing medical care and treatment for Commonwealth Army veterans and new Philippine Scouts. I am working to utilize this authority to provide grants of equipment, as well as assistance in installation and maintenance of the equipment, to the Philippine government to improve care at the Veterans Memorial Medical Center in Manila. I anticipate the equipment grants would be for \$500,000 per year.

ROLL CALL VOTES

During Committee consideration of H.R. 3645, there was a recorded vote on an amendment offered by Mr. Filner to extend compensation benefits to certain Filipino veterans. The amendment was rejected on a roll vote of 14–15.

Date: Tuesday, July 16, 2002
 Call to Order: 9:35 a.m.
 Adjourn: 11:10 a.m.
 Subject: Filner amendment to H.R. 3645 (as amended)

NAME	YEA	NAY	NOT VOTING
Chris Smith, NJ, Chairman		X	
Bob Stump, AZ			X
Michael Bilirakis, FL, Vice Chairman		X	
Terry Everett, AL		X	
Steve Buyer, IN		X	
Jack Quinn, NY		X	
Cliff Stearns, FL		X	
Jerry Moran, KS		X	
Howard (Buck) McKeon, CA		X	
Jim Gibbons, NV		X	
Mike Simpson, ID		X	
Richard Baker, LA		X	
Rob Simmons, CT		X	
Ander Crenshaw, FL		X	
Henry Brown, SC			X
Jeff Miller, FL		X	
John Boozman, AR		X	
Lane Evans, IL, Ranking	X		
Bob Filner, CA	X		
Luis Gutierrez, IL	X		
Corrine Brown, FL	X		
Julia Carson, IN	X		
Silvestre Reyes, TX	X		
Vic Snyder, AR	X		
Ciro Rodriguez, TX	X		
Ronnie Shows, MS	X		
Stephen Lynch, MA	X		
Shelley Berkley, NV	X		
Baron P. Hill, IN	X		
Tom Udall, NM	X		
Susan Davis, CA	X		
TOTAL	14	15	2

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 2002.

Hon. CHRISTOPHER H. SMITH
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3645, the Veterans Health Care and Procurement Reform and Improvement Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss, who can be reached at 226–2840.

Sincerely,

DAN L. CRIPPEN,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3645, VETERANS HEALTH CARE AND PROCUREMENT IMPROVEMENT ACT OF 2002, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS ON JULY 16, 2002

SUMMARY

H.R. 3645 would change how the Department of Veterans Affairs (VA) procures its health care items. The bill would require that all health care items be purchased through the use of the federal supply schedule (FSS) or national contracts, except for defined exceptions and emergencies approved by the Secretary of Veterans Affairs. H.R. 3645 also would expand VA's enhanced-use lease authority. In addition, the bill would expand health care benefits for certain Filipino veterans, and provide dental benefits for certain former prisoners of war. H.R. 3645 would institute new auditing and accountability standards for research corporations established at VA medical centers. Finally, H.R. 3645 would name an outpatient clinic in New London, Connecticut, as the "John J. McGuirk Department of Veterans Affairs Outpatient Clinic."

The expanded authority for entering into enhanced-use leases would likely generate new federal collections (shown in this estimate as an offset to direct spending), but spending of such additional collections would be subject to appropriation action. CBO estimates that enacting the bill would not affect direct spending in 2003, but would reduce direct spending by about \$2 million over the 2003–2007 period, and by about \$4 million over the 2003–2012 period. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

In addition, H.R. 3645 would modify provisions governing discretionary spending for veterans' health care programs, which CBO estimates would result in outlays of \$8 million in 2003 and \$65 million over the 2003–2007 period, assuming appropriation of the estimated amounts.

H.R. 3645 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3645 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

By Fiscal Year, in Millions of Dollars						
	2002	2003	2004	2005	2006	2007
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	0	^a	- 1	- 1	- 1
Estimated Outlays	0	0	^a	- 1	- 1	- 1
SPENDING SUBJECT TO APPROPRIATION						
Baseline Spending Under Current Law for Veterans' Medical Care						
Estimated Authorization Level ^b	22,178	22,884	23,684	24,700	25,262	26,094
Estimated Outlays	22,202	22,865	23,485	24,189	24,978	25,801
Proposed Changes						
Estimated Authorization Level	0	9	16	15	14	13
Estimated Outlays	0	8	15	15	14	13
Spending Under H.R. 3645 for Veterans' Medical Care						
Authorization Level ^b	22,178	22,893	23,700	24,715	25,276	26,107
Estimated Outlays	22,202	22,873	23,500	24,204	24,992	25,814

^a Less than \$500,000.

^b The 2002 level is the estimated net amount appropriated for that year. The current law amounts for the 2003–2007 period are CBO baseline projections that assume appropriations remain at the 2002 level, with adjustments for inflation.

BASIS OF ESTIMATE

For this estimate CBO assumes that the bill will be enacted near the beginning of fiscal year 2003, and that estimated amounts will be appropriated each year.

DIRECT SPENDING

H.R. 3645 would expand VA's current authority to enter into enhanced-use leases and to dispose of certain property. An enhanced-use lease is one where VA leases out its property on the condition that at least part of the property is used in a manner that contributes to VA's mission or improves services provided to veterans in the region where the lease occurs. Under current law, only the Veterans Health Administration (VHA) within VA has the authority to enter into enhanced-use leases. The lease payments to VHA are deposited into the Health Services Improvement Fund.

Under current law, amounts deposited into the Health Services Improvement Fund are considered offsets to direct spending, but VA may spend amounts in the fund without appropriation action. Thus, any such collections are spent, resulting in no net impact on direct spending. In addition, VA has the authority to sell property it leases to other parties at any time during the lease period and up to 30 days after the lease has expired. Proceeds from those sales are deposited into the Nursing Home Revolving Fund. Amounts deposited into the Nursing Home Revolving Fund are considered offsets to direct spending and spending from the fund is subject to appropriation action.

Veterans Health Administration Leases of Property. CBO expects that VHA would find it easier to enter into enhanced-use leases under H.R. 3645 because the bill would shorten the time period between when VHA notifies the Congress and the public of its intent to lease out a property and when that lease can be signed from 90

days to 45 days. CBO estimates that under this provision VHA would increase its receipts by less than \$500,000 a year because the shorter notification period would not be a significant change from current practice. (The VHA currently receives about \$1 million in annual receipts from enhanced-use leases.) Because VHA can spend these collections without appropriation action, CBO estimates that the net impact of this provision on the budget would be negligible for each year.

Veterans Health Administration Sales of Property. CBO also expects that VHA would be able to sell its leased property more easily under the bill since it also would shorten the time period between when VHA notifies the Congress and the public of its intent to sell a property and when the sale can be completed from 90 days to 45 days. Under current law, the VHA must notify the General Services Administration (GSA) about proposed sales and the two agencies must jointly agree on the terms of the sale. Under the bill, VHA would be able to sell its leased property on its own without having to notify or work with GSA. However, proceeds from the sale of leased property would no longer be deposited into the Nursing Home Revolving Fund under the bill, but would be deposited to the General Fund of the Treasury. While future sales could produce offsetting receipts, CBO believes that VHA would not dispose of any property under this bill because it would not be able to spend the proceeds.

Veterans Benefit Administration and National Cemetery Administration Leases of Property. H.R. 3645 also would allow both the Veterans Benefit Administration and the National Cemetery Administration to enter into enhanced-use leases. Proceeds from these leases would be credited to each organization's appropriation account, but spending from the fund would be subject to annual appropriation action.

Because the increased collections would stem from the authority granted in H.R. 3645 (and would not be subject to appropriation action), we show them as a reduction in direct spending in this cost estimate. Based on the current level of collections received by the VHA, CBO estimates that enacting this provision would have no budgetary impact in 2003, but would increase collections by less than \$500,000 in 2004 and by just over \$500,000 every year thereafter. Thus, CBO estimates the bill would reduce direct spending by about \$2 million over the 2003–2007 period, and by about \$4 million over the 2003–2012 period.

Veterans Benefit Administration and National Cemetery Administration Sales of Property. As with VHA, the Veterans Benefit Administration and the National Cemetery Administration would also be allowed to dispose of leased or recently leased property with the proceeds reverting to the General Fund of the Treasury. As discussed above, CBO does not expect that either of these two organizations would actually dispose of any property because the proceeds would be deposited into the U.S. Treasury.

SPENDING SUBJECT TO APPROPRIATION

Three provisions in H.R. 3645 could affect spending subject to appropriation. The bulk of CBO's estimated impact on discretionary

spending, however, is for a provision that would make certain Filipino veterans newly eligible for VA health care benefits.

Filipino Veterans. Under current law, only certain Filipino veterans who served during World War II are eligible for health care benefits from VA. Under H.R. 3645, any individual who is a Commonwealth Army veteran or New Philippine Scout living legally in the United States would be eligible for VA health care benefits. Using information from VA, CBO estimates that in 2003 about 11,000 Filipino veterans would qualify for this new benefit. CBO estimates that about 2,000 of these veterans would use VA health care benefits in 2003 at an estimated cost of \$4,200 per person. After adjusting for mortality, CBO expects that the number of eligible Filipino veterans using VA health care benefits would grow to 2,700 by 2007 as more of these veterans become aware of the benefit. Accordingly, CBO estimates that providing health care benefits to these Filipino veterans would cost \$8 million in 2003 and \$65 million over the 2003–2007 period, assuming appropriation of the necessary amounts. Costs could be significantly higher—if a much greater percentage of the eligible Filipino veterans apply for the health benefits.

Health Care Procurement. H.R. 3645 would change how the VA procures its health care items. The bill would require that all health care items be purchased through the use of the FSS or national contracts, except for narrowly defined exceptions and emergencies approved by the Secretary of Veterans Affairs. CBO believes that implementing the bill might generate some small savings, assuming appropriations are reduced accordingly, but we cannot provide a specific estimate.

VA currently spends about \$4.5 billion annually from appropriated funds buying health care items, and many of those items are already purchased through the use of FSS or national contracts. That is especially true for pharmaceuticals, which account for more than \$2.5 billion of VA's health care purchases. Restructuring VA's procedures for buying health care products under H.R. 3645 might generate some small savings, but we cannot estimate the amount. Available data from VA is primarily anecdotal, and while some VA facilities purchase items locally and pay more than they might under a national contract, other VA facilities purchase health care items at prices lower than FSS or national contract rates. Based on this information and a recent study by the General Accounting Office of purchasing groups for hospitals, CBO does not believe that using FSS or national contracts uniformly would lower costs for all VA facilities. Thus, any savings would be offset to some extent by increased costs at some hospitals. Without more specific data, CBO cannot estimate the extent of the net savings that might occur from implementing H.R. 3645.

Dental Care for Prisoners of War. Under current law, former prisoners of war are eligible for dental benefits provided by VA if they were prisoners of war for more than 90 days. Under H.R. 3645, all former prisoners of war would be eligible for dental benefits regardless of how long they were held as prisoners. Using information from VA, CBO estimates that this provision would cost less than \$500,000 a year.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through fiscal year 2006 are counted.

	By Fiscal Year, in Millions of Dollars										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in outlays	0	0	^a	-1	-1	-1	-1	-1	-1	-1	-1
Changes in receipts						Not Applicable					

^aLess than \$500,000.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 3645 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On June 26, 2002, CBO transmitted a cost estimate for H.R. 3645, the Veterans Health Care Items Procurement Reform and Improvement Act of 2002, as introduced on January 29, 2002. Both versions of the bill would change the way VA procures its health care items, though H.R. 3645, as ordered reported, would establish somewhat less stringent restrictions on VA's procurement practices than the introduced bill. CBO believes that changing VA's procurement practices as specified in either version of the bill might produce some small savings in discretionary spending, but we cannot estimate the amount of those savings.

In addition, H.R. 3645, as ordered reported, contains several provisions that are not in the introduced bill, including the provision of health care to certain Filipino veterans, expansion of VA's enhanced-use lease authority, and the provision of dental care to certain veterans. Differences in the other estimated costs reflect these differences in the bills.

ESTIMATE PREPARED BY:

Federal Costs: Sam Papenfuss
Impact on State, Local, and Tribal Governments: Greg Waring
Impact on the Private Sector: Sally S. Maxwell

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

STATEMENT OF FEDERAL MANDATES

The preceding Congressional Budget Office cost estimate states that the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

APPLICABILITY TO LEGISLATIVE BRANCH

The reported bill would not be applicable to the legislative branch under the Congressional Accountability Act, Public Law 104–1, because the bill would only affect certain Department of Veterans Affairs health care programs.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress’ power to “provide for the common Defense and general Welfare of the United States.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART II—GENERAL BENEFITS

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CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * *

§ 1712. Dental care; drugs and medicines for certain disabled veterans; vaccines

(a)(1) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(A) * * *

* * * * *

(F) from which a veteran who is a former prisoner of war [and who was detained or interned for a period of not less than 90 days] is suffering;

* * * * *

SUBCHAPTER IV—HOSPITAL CARE AND MEDICAL TREATMENT FOR VETERANS IN THE REPUBLIC OF THE PHILIPPINES

* * * * *

§ 1734. Hospital and nursing home care and medical services in the United States

[(a) The Secretary, within the limits of Department facilities, may furnish hospital and nursing home care and medical services to Commonwealth Army veterans and new Philippine Scouts for the treatment of the service-connected disabilities of such veterans and scouts.

[(b) An individual who is in receipt of benefits under subchapter II or IV of chapter 11 of this title paid by reason of service described in section 107(a) of this title who is residing in the United States and who is a citizen of, or an alien lawfully admitted for permanent residence in, the United States shall be eligible for hospital and nursing home care and medical services in the same manner as a veteran, and the disease or disability for which such benefits are paid shall be considered to be a service-connected disability for purposes of this chapter.]

(a) The Secretary shall furnish hospital and nursing home care and medical services to any individual described in subsection (b) in the same manner, and subject to the same terms and conditions, as apply to the furnishing of such care and services to individuals who are veterans as defined in section 101(2) of this title. Any disability of an individual described in subsection (b) that is a service-connected disability for purposes of this subchapter (as provided for under section 1735(2) of this title) shall be considered to be a service-connected disability for purposes of furnishing care and services under the preceding sentence.

(b) Subsection (a) applies to any individual who is a Commonwealth Army veteran or new Philippine Scout and who—

(1) is residing in the United States; and

(2) is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

* * * * *

PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

* * * * *

CHAPTER 73—VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS

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SUBCHAPTER IV—RESEARCH CORPORATIONS

7361. Authority to establish; status.

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7367. Annual report to congressional committees.

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SUBCHAPTER IV—RESEARCH CORPORATIONS

* * * * *

§ 7366. Accountability and oversight

(a) * * *

[(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. A corporation with revenues in excess of \$300,000 for any year shall obtain an audit of the corporation for that year. A corporation with annual revenues between \$10,000 and \$300,000 shall obtain an independent audit of the corporation at least once every three years. Any audit under the preceding sentences shall be performed by an independent auditor. The corporation shall include the most recent such audit in the corporation's report to the Secretary for that year.]

(b)(1) Not later than March 1 each year, each such corporation shall submit to the Secretary a report concerning the preceding calendar year. Each such annual report shall include the following:

(A) A detailed statement of the corporation's operations, activities, and accomplishments during the preceding calendar year.

(B) A description of each research project or activity for which funds were provided by the corporation during that year or for which funds were provided by the corporation during a preceding year and that is ongoing during the year covered by the report, including, for each such project or activity, the title of the project or activity and a description of the purpose of the project or activity.

(C) A statement of the amount of funds controlled by the corporation as of the first day, and as of the last day, of the year covered by the report and a statement of the amount of funds received, shown by source, during the year.

(D) An itemized accounting of all disbursements made during the year.

(E) The most recent audit of the corporation under paragraph (2).

(F) Such other information as may be necessary to enable the Secretary to prepare the annual report to congressional committees required under section 7367 of this title.

(2) A corporation with a balance of funds under its control in excess of \$300,000 at any time during a calendar year shall obtain an audit of the corporation for that year. Any other corporation shall obtain an independent audit of the corporation at least once every three years. The report on any such audit shall specifically state whether the corporation audited made any payment, or provided any travel, during the period covered by the audit to a member of the board of directors of the corporation and, if so, the amount and recipient of any such payment or travel.

(3) Any audit under paragraph (2) shall be performed by an independent auditor and shall be performed in accordance with generally accepted Government auditing standards and in accordance with Office of Management and Budget Circular A-133.

(4) The Inspector General of the Department shall each year review the most recent audit under paragraph (2) of not less than 10 percent of the corporations described in the first sentence of paragraph (2) and not less than 10 percent of the corporations described in the second sentence of that paragraph. As part of such review, the Inspector General shall determine whether the audit was carried

out in accordance with generally accepted Government auditing standards, as required by paragraph (3).

* * * * *

§ 7367. Annual report to congressional committees

[(d)] (a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the corporations established under this subchapter. *Each such report shall be based on the annual reports submitted by the corporations to the Secretary under section 7366(b) of this title and shall be submitted not later than May 1 of the year following the year covered by such reports.* [The report shall]

(b) *Each such report shall set forth the following information:*

(1) * * *

* * * * *

§ 7368. Expiration of authority

No corporation may be established under this subchapter after December 31, [2003] 2006.

* * * * *

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

* * * * *

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

* * * * *

SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

8161. Definitions.

8162. Enhanced-use leases.

[8163. Designation of property to be leased.]

8163. *Hearing and notice requirements regarding proposed leases.*

* * * * *

SUBCHAPTER II—PROCUREMENT AND SUPPLY

§ 8121. Revolving supply fund

(a) * * *

(b) *The Secretary may authorize the Secretary of Defense to make purchases through the fund in the same manner as activities of the Department. When services, equipment, or supplies are furnished to the Secretary of Defense through the fund, the reimbursement required by paragraph (2) of subsection (a) shall be made from appropriations made to the Department of Defense, and when services or supplies are to be furnished to the Department of Defense, the fund may be credited, as provided in paragraph (3) of subsection (a), with advances from appropriations available to the Department of Defense.*

(c) At the end of each fiscal year, there shall be covered into the Treasury of the United States as miscellaneous receipts such amounts as the Secretary determines to be in excess of the requirements necessary for the maintenance of adequate inventory levels and for the effective financial management of the revolving supply fund.

[(b)] (d) An adequate system of accounts for the fund shall be maintained on the accrual method, and financial reports prepared on the basis of such accounts. An annual business type budget shall be prepared for operations under the fund.

[(c)] (e) The Secretary is authorized to capitalize, at fair and reasonable values as determined by the Secretary, all supplies and materials and depot stocks of equipment on hand or on order.

* * * * *

[§ 8125. Procurement of health-care items

[(a) Except as provided in subsections (b) and (c) of this section, the Secretary may not procure health-care items under local contracts.

[(b)(1) A health-care item for use by the Department may be procured under a local contract if—

[(A) the procurement is within the limits prescribed in paragraph (3) of this subsection; and

[(B)(i) the item is not otherwise available to the Department medical center concerned,

[(ii) procurement of the item by a local contract is necessary for the effective furnishing of health-care services or the conduct of a research or education program at a Department medical center, as determined by the director of the center in accordance with regulations which the Under Secretary for Health shall prescribe, or

[(iii) procurement under a local contract is demonstrably more cost-effective for the item.

[(2) In the case of the need for an emergency procurement of a health-care item, such item may be procured under a local contract, but no greater quantity of such item may be procured by a local contract than is reasonably necessary to meet the emergency need and the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

[(3)(A) Except as provided in subparagraphs (C) and (D) of this paragraph, not more than 20 percent of the total of all health-care items procured by the Department in any fiscal year (measured as a percent of the total cost of all such health-care items procured by the Department in that fiscal year) may be procured under local contracts.

[(B) Local contracts for the procurement of health-care items shall, to the maximum extent feasible, be awarded to regular dealers or manufacturers engaged in the wholesale supply of such items.

[(C) The Secretary may increase for a fiscal year the percentage specified in subparagraph (A) of this section to a percentage not greater than 30 percent if the Secretary, based on the experience of the Department during the two fiscal years preceding such fiscal year, determines that the increase and the amount of the increase

are necessary in the interest of the effective furnishing of health-care services by the Department. The authority to increase such percentage may not be delegated.

[(D) Items procured through an emergency procurement shall not be counted for the purpose of this paragraph.]

[(c) A provision of law that is inconsistent with subsection (a) or (b) of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for use by the Department.]

[(d)(1) Not later than December 1 of each year, the director of each Department medical center shall transmit to the Secretary a report containing a list indicating the quantity of each health-care item procured at that medical center under a local contract during the preceding fiscal year and the total amount paid for such item during such fiscal year.]

[(2) No later than February 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience in carrying out this section during the preceding fiscal year.]

[(e) For the purposes of this section:

[(1) The term "health-care item" includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66. Effective December 1, 1992, such term also includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 73. Such term does not include perishable items.]

[(2) The term "local contract" means a contract entered into by a Department medical center for procurement of an item for use by that medical center.]

[(3) The term "emergency procurement" means a procurement necessary to meet an emergency need, affecting the health or safety of a person being furnished health-care services by the Department, for an item.]

§8125. Procurement of health-care items

(a) Except as provided in subsection (b), any procurement of a health-care item by the Department shall be made through the use of a Federal Supply Schedule contract, or a national contract, that meets the requirements of subsection (d).

(b)(1) Subsection (a) does not apply to a procurement of a health-care item in any of the following cases:

(A) A procurement that is necessary to meet a current or near-term medical emergency at a medical center.

(B) A procurement that is for a health-care item that is not listed in the Federal Supply Schedule or as part of a national contract and for which there is a valid clinical need.

(C) A procurement that is for a specialized health-care item not listed in the Federal Supply Schedule or as part of a national contract and that is to meet the special needs of an individual patient who has one of the special needs identified in section 1706(b) of this title and who has a valid clinical need for the item.

(D) A procurement that is part of an approved sharing agreement between the Department of Defense and the Department of

Veterans Affairs with demonstrable cost-per-item savings for a health-care item listed on the Federal Supply Schedule or a national contract.

(E) A procurement that supports a prime contract or a sub-contract with a small business concern qualifying for a procurement preference program under section 8 or 15 of the Small Business Act (15 U.S.C. 637, 644), if the cost of the item to be procured is no more than the cost (taking price and value into consideration) of the comparable item on the Federal Supply Schedule or national contract and if the item meets the requirements of subsections (d)(1)(A) and (d)(2).

(2) A procurement may be made as authorized under subparagraph (B) of paragraph (1) only if the procurement is specifically authorized in advance in writing by the Secretary. The authority of the Secretary under the preceding sentence may only be delegated to the Deputy Secretary or to an official of the Veterans Health Administration not below the level of a Deputy Under Secretary (or equivalent) acting jointly with a procurement executive of the Department not below the level of an Associate Deputy Assistant Secretary.

(c) In the case of an emergency procurement of a health-care item as authorized by subsection (b)(1)(A), the quantity of the item procured may not exceed the quantity of that item that is the reasonably foreseeable need for the item at the medical center concerned until resupply can be achieved through procurement actions other than emergency procurement.

(d) A contract meets the requirements of this subsection if—

(1) the contract includes—

(A) provisions referred to as “preaward and postaward audit clauses”; and

(B) a provision referred to as a “price reduction clause”; and

(2) in the case of a contract to be made with a vendor that is a distributor, the contract will be for distribution services only unless the manufacturer of the product can clearly demonstrate that at least 60 percent of its sales of the item through that vendor is to commercial customers with negotiated product prices and that the vendor actually stocks and distributes the product.

(e)(1) The Secretary shall establish procedures to assure compliance by each Department medical facility with the provisions of this section and with applicable Federal and Department procurement regulations.

(2) The procedures established by the Secretary under paragraph (1) shall be designed to maximize health-care item variety and the use of the Federal Supply Schedule.

(3) The Secretary shall establish and enforce procedures limiting the standardization of items at the local, regional, or national level to provide special patient populations (as identified in section 1706(b) of this title) with the range and types of health-care items required to meet their clinical and quality-of-life needs.

(4) The Advisory Committee on Prosthetics and Special-Disabilities Programs established under section 543 of this title shall review the procedures established under paragraph (3), including the implementation of those procedures, and shall advise the Secretary

when those procedures are not effectively enforced by the Department.

(f)(1) The Secretary shall establish annual goals for Department medical centers for the purchase of health-care items from Federal Supply Schedule and national contracts meeting the requirements of subsection (d). Such goals shall be designed to maximize the percentage of such purchases that are made through such contracts.

(2) The Secretary shall establish goals for the Department for procurements from small business concerns qualifying for a procurement preference program under section 8 or 15 of the Small Business Act (15 U.S.C. 637, 644). Such goals shall be no less than the national goal for each such procurement preference program under either of those sections.

(3) Achievement of the goals established under this subsection shall be an element in the performance standards for employees of the Department who have the authority and responsibility for achieving those goals.

(g) A provision of law that is inconsistent with any provision of this section shall not apply, to the extent of the inconsistency, to the procurement of a health-care item for the Department.

(h)(1) Not later than December 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the procurement of health-care items during the preceding fiscal year. Each such report shall include, for the year covered by the report, the following:

(A) The total dollar amount of all items listed in Federal Supply Classification (FSC) Group 65 or 66 and the total dollar value of the exceptions to subsection (a) under each of subparagraphs (A), (B), (C), (D), and (E) of subsection (b)(1), shown by medical facility.

(B) A detailed explanation for exceptions to subsection (a), including—

(i) the rationale for use of emergency procurement at Department medical facilities;

(ii) the rationale for approval of requests under subsection (b)(1)(B) for procurement of items not listed on the Federal Supply Schedule or on national contracts; and

(iii) exceptions granted for special health-care needs of veterans with disabilities described in section 1706(b) of this title.

(C) Analysis of sharing agreements between the Department and the Department of Defense to indicate the basic written sharing initiative and the division of financial responsibility between the two Departments.

(D) The stated goal under each procurement preference program, together with an assessment of the performance of the Department toward achievement of that goal, especially with respect to the goal for contracting with businesses that are owned by veterans with service-connected disabilities.

(2) The Advisory Committee on Prosthetics and Special-Disabilities Programs of the Department shall submit comments on each report under paragraph (1) before the report is submitted under that paragraph, and the Secretary shall include those comments in the report as submitted.

(i) For the purposes of this subsection:

(1) The term “health-care item” includes any item listed in, or (as determined by the Secretary) of the same nature as an item listed in, Federal Supply Classification (FSC) Group 65 or 66.

(2) The term “national contract” means a contract for procurement of an item that is entered into by the National Acquisition Center of the Department or another Department procurement activity, as authorized by the Secretary, that is available for use by all Department medical facilities.

(3) The term “valid clinical need” means in the professional judgment of an appropriate clinician. Such term applies to health care items, prosthetic appliances, sensory or mobility aids and supplies that are prescribed by a physician for special patient populations such as veterans with spinal cord dysfunction, blindness, amputations, and other veterans included in section 1706(b) of this title.

(4) The term “Federal Supply Schedule contract” means a contract that is awarded and administered by the National Acquisition Center of the Department under a delegation of authority from the Administrator of the General Services Administration.”

(5) The term “emergency procurement” means a procurement necessary to meet an emergency need affecting the health or safety of a person being furnished health-care services by the Department.

* * * * *

SUBCHAPTER V—ENHANCED-USE LEASES OF REAL PROPERTY

* * * * *

§ 8162. Enhanced-use leases

(a)(1) * * *

(2) The Secretary may enter into an enhanced-use lease only if—

(A) * * *

(B) the Secretary determines that the implementation of a business plan [proposed by the Under Secretary for Health] *proposed by one of the Under Secretaries* for applying the consideration under such a lease [to the provision of medical care and services] *to the programs and activities of the Department* would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

* * * * *

[§ 8163. Designation of property to be leased]

§ 8163. *Hearing and notice requirements regarding proposed leases*

(a) If the Secretary proposes to [designate a property to be leased under an enhanced-use lease] *enter into an enhanced-use lease with respect to certain property*, the Secretary shall conduct a public hearing [before making the designation] *before entering into the lease*. The hearing shall be conducted in the community in

which the property is located. At the hearing, the Secretary shall receive the views of veterans service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on—

(1) * * *

* * * * *

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice **of the proposed designation** *to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing.* The notice shall include the following:

(1) * * *

* * * * *

(c)(1) If after a hearing under subsection (a) the Secretary intends to **designate the property involved** *enter into an enhanced-use lease of the property involved*, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention **to so designate the property** *to enter into such lease* and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced use lease until the end of the **90-day period** *45-day period* beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) * * *

* * * * *

(D) A **general** *description of the provisions* of the proposed lease.

* * * * *

(G) A *summary of a cost-benefit analysis of the proposed lease.*

[(4) Not less than 30 days before entering into an enhanced-use lease, the Secretary shall submit to the congressional veterans' affairs committees a report on the proposed lease. The report shall include—

[(A) updated information with respect to the matters described in paragraph (3);

[(B) a summary of a cost-benefit analysis of the proposed lease;

[(C) a description of the provisions of the proposed lease; and

[(D) a notice of designation with respect to the property.]

§ 8164. Authority for disposition of leased property

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property **by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)].** A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8122 of this title is in the best interests of the De-

partment. [The Administrator, upon request of the Secretary, shall take appropriate action under this section to dispose of property of the Department that is or has been subject to an enhanced-use lease.]

(b) A disposition under this section may be made for such consideration as the [Secretary and the Administrator of General Services jointly determine] *Secretary determines* is in the best interest of the United States and upon such other terms and conditions as the [Secretary and the Administrator consider] *Secretary considers* appropriate.

(c) Not less than [90 days] *45 days* before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

§ 8165. Use of proceeds

(a)[(1)] Funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Health Services Improvement Fund established under section 1729B of this title, *except that any funds received by the Department under an enhanced-use lease in support of the Veterans Benefits Administration or the National Cemetery Administration and remaining after any deduction from such funds under subsection (b) shall be credited to applicable appropriations of that Administration.*

[(2)] Funds received by the Department from a disposal of leased property under section 8164 of this title and remaining after any deduction from such funds under the laws referred to in subsection (c) shall be deposited in the nursing home revolving fund.]

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses. *The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.*

[(c)] Subsection (a) does not affect the applicability of section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485) or the Act of June 8, 1896 (40 U.S.C. 485a), with respect to reimbursement of the Administrator of General Services for expenses arising from any disposal of property under section 8164 of this title.]

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